

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID J. TYRAN JR.,

Plaintiff,

Case No. 1:07-cv-393

v.

Honorable Richard Alan Enslen

TROY BENOIT, *et al.*,

Defendants.

ORDER

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. On August 20, 2007, the Court entered an order dismissing Plaintiff's action for failure to state a claim. Plaintiff subsequently filed a notice of appeal and a motion for leave to proceed *in forma pauperis*. The Court granted Plaintiff leave to proceed *in forma pauperis* on appeal. However, as outlined in the Court's Order, Plaintiff is required to pay the entire appellate filing fee in monthly payments. *See* 28 U.S.C. § 1915(b)(1).

Plaintiff has filed an "objection" to the order granting him *in forma pauperis* status on appeal (Dkt. No. 13). Plaintiff states that he cannot afford to pay the appellate filing fee and does not wish to appeal his case. The obligation to pay the filing fee arises at the time an appeal is filed. *McGore v. Wigglesworth*, 114 F.3d 601, 607 (6th Cir. 1997) ("Even a voluntary dismissal of a complaint or an appeal does not eliminate a prisoner's obligation to pay the required filing fees."); *see also In re Alea*, 286 F.3d 378, 381 (6th Cir. 2002) (dismissal of a prisoner's civil rights action pursuant to the three-strikes provision did not obviate the requirement that the prisoner pay the

district court filing fee). Accordingly, Plaintiff's objection will be denied. If Plaintiff wishes to voluntarily dismiss his appeal, he must file a motion in the Sixth Circuit Court of Appeals.

Therefore:

IT IS HEREBY ORDERED that Plaintiff's Objection (Dkt. No. 13) to the Order granting him *in forma pauperis* status on appeal is **DENIED**.

DATED in Kalamazoo, MI:
June 2, 2008

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE